

### REMARKS

Claims 5 to 10 are now pending.

Reconsideration is respectfully requested based on the following.

Claims 5 to 10 were rejected under 35 U.S.C. § 102(b) as being unpatentable over Takaya et al., U.S. Patent Number 5,497,327 (the "Takaya" reference).

As regards the anticipation rejections of the claim, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejection, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the rejections may not be agreed with, to facilitate matters, claim 5 has been rewritten, so that it is to a method for triggering a restraint device which includes the features of triggering the restraint device as a function of a collision signal and initiating the triggering when the collision signal exceeds a noise threshold *at a triggering time* in which *calculated time* required for the collision signal to exceed the noise threshold is taken into account in determining the triggering time for the restraint device, *in which the calculated time is calculated from a time function of collision velocity*.

As regard claim 5, the Final Office Action refers to the abstract, the text at column 5, line 4 to column 6, line 3, and Figures 6 and 7 of the "Takaya" reference as assertedly disclosing the feature of initiating the triggering when the collision signal exceeds a noise

threshold at a triggering time in which a time required for the collision signal to exceed the noise threshold is taken into account in determining the triggering time for the restraint device. (See Final Office Action, page 2, line 19 to page 3, line 2). In particular, the Final Office Action conclusorily asserts that “a time is timed until the integrated value exceeds a threshold value” (see “Takaya,” abstract) relates to a *calculated time required* as in claim 5, and the operating timing (FT) (see “Takaya,” abstract, column 5, line 4 to column 6, line 3, and Figures 6 and 7) relates to the *triggering time* as in claim 5. (See *id.*)

It is respectfully submitted that the “Takaya” reference does not identically disclose each and every feature of claim 5. As regards the “calculated time required for the collision signal to exceed the noise threshold” feature of claim 5, as presented, the timed time in the cited reference does not identically disclose this claim 5 feature. In the “Takaya” reference, the time (duration) is timed during a deceleration process until an integrated value exceeds a threshold value (see “Takaya” Abstract, Figure 7). This is different than the calculated time required for the collision signal to exceed a noise threshold, in which the calculated time is calculated from a time function of collision velocity which is empirically determined in advance. Therefore, the time timed until the integrated value exceeds a threshold during deceleration process in the “Takaya” reference does not identically disclose the calculated time (calculated from a predetermined function) required for the collision signal to exceed a noise threshold, as provided for in the context of claim 5, as presented.

As regards the “triggering time” feature of claim 5, the operating timing (FT) in the cited reference does not identically disclose the triggering time (accounted for a calculated time required for a collision signal to exceed a noise threshold), which is a time point at which the collision signal is checked to determine if the collision signal indeed exceeds the noise threshold, at which point the collision signal may exceed the noise threshold. When the collision signal indeed exceeds the noise threshold at the triggering time, the triggering of a restraint device is initiated. In stark contrast, the operating time (FT) in the cited reference relates to an operation time calculated until an integrated value ( $S$ ) exceeds a threshold value ( $S_0$ ), (see “Takaya,” Figures 7 and 8, Abstract; and column 5, line 51 to column 6, line 11). This does not identically disclose the feature of a triggering time at which the collision signal is checked against the noise threshold. Indeed, the operating time (FT) is determined only after the integrated value exceeds a threshold value, which is wholly different than the triggering time at which the collision signal is checked to determine whether it exceeds the noise threshold.

Therefore, the operating or operation time (FT) of the "Takaya" reference does not identically disclose the triggering time as provided for in claim 5.

Accordingly, claim 5, as presented, is allowable, as are its dependent claims 6 to 10. Withdrawal of the anticipation rejections of claims 6 to 10 is therefore respectfully requested.

In sum, all claims 5 to 10 are allowable.

### CONCLUSION

In view of the foregoing, claims 5 to 10 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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